

## THE MYTH OF MAGNA CARTA

“**M**AGNA CARTA is then the first corporate act of the nation roused to the sense of its unity.” “The nation in general, the people of the towns and villages, the commons of later days . . . had now thrown themselves on the side of the barons.” “The people . . . for the first time since the Conquest ranged themselves on the side of the barons against the king.”

These are the words, clear and unmistakeable, of a writer to whom every student of English history owes an incalculable debt, who combines great learning with sound judgment, who is, in fact, almost above praise, whose memory is one of the precious things of those who were privileged to sit at his feet. The view which the words express, though he did not found it, has passed into modern text-books written under his influence—has, in fact, become classical, accepted alike by scholars and laymen. Though, in a sense, but an abstract view, it cannot be regarded, surely, as of interest only to experts; for, if it be true, the grant of Magna Carta was an epoch in the national life, if it be untrue, the whole nation is being trained to take a distorted view of its own past.

Clear and unmistakeable are the words. They assert, that the Great Charter was the result, not of a class movement, still less of an accidental conspiracy, but of the united efforts of “the nation, the people of the towns and villages”—in fact, of all ranks in the community. The Charter was not merely won *for* “the people”; it was won *by* “the people,” in conjunction, of course, with the barons and the prelates.

This is a momentous fact, if it be a fact. Happily, the

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evidence by which it must stand or fall, is neither obscure nor technical, and can be appreciated by the layman almost as well as by the historical expert. It is only necessary for us to put aside preconceived notions, and look at the testimony. All the beliefs of past generations cannot make a conclusion true, if the evidence does not warrant it.

Shall the expected word of apology here be said? By one at least, and he most entitled, we may be very sure that no apology would have been desired. In his clear zeal for the truth, the late Bishop of Oxford would have welcomed every honest questioning of his conclusions. Never was a writer whose works breathe a purer spirit of devotion to the light ; never one more patient of differing views, more earnest to foster the spirit of enquiry. Towards the writers who have reproduced his words, apology is less due ; but it is freely offered. The general reader, impatient of attempts to disparage the equator, and incredulous of criticism, may be reminded, that other traditions, once very much accepted, have disappeared. Where is now the "folkland" of the Saxon nation? Where the "English Canon Law" of the days before the Reformation?

To come to the point. Till a few months ago, the writer held (and, it is to be feared, taught) the accepted view of Magna Carta, relying on the orthodox guides. A careful examination of the evidence, undertaken in discharge of a public duty, has slowly brought him to the conclusion, that there is no shadow of justification for the conventional doctrine—that in truth, Magna Carta was not (a) the work of the "nation" or the "people" in any reasonable sense of the term, nor (b) a landmark in constitutional progress, but (c) a positive nuisance and stumbling-block to the generation which came after it. In other words, it is "Great" only as the caravan giant is great, not as Napoleon and Goethe were great. It is a bulky document.

(a) Now the first of these three contentions is partly a matter of evidence, partly a matter of inference. Needless to say, the Charter itself affords no direct evidence for the view that it was won by the united efforts of "the people." Though addressed "to all the king's faithful men," it expressly bears to have been granted on the counsel of twenty-

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seven persons named, every one of whom was a prelate, an earl, or (as the Charter itself puts it), a *nobilis* ; and the formal addition of "other faithful men of ours" must, according to the well-known rule of *ejusdem generis*, be held to mean, other men of a similar rank. Moreover, the Charter entrusts the execution of itself to a committee of "barons of the kingdom" ; and, when these are chosen, their names are seen, with the single exception of that of the Mayor of London (of whom more hereafter) to be of the bluest blood of the feudal and official aristocracy.

But, of course, our knowledge of the circumstances is not confined to the Charter itself. Like almost all historical events, it was the outcome of both general and special causes. The former are known to all students of history ; the latter are detailed for us in the writings of some score of chroniclers, several of them strictly contemporary, others living within a generation of the events which they describe.

The general cause at work, the cosmic force behind the framers of the Charter, was jealousy of the growing power of the monarchy. The twelfth century had been an age of great rulers. Friedrich Barbarossa and Friedrich II. in Germany, Philip Augustus in France, above all, Henry Fitz-Empress in England, had borne hardly upon feudal independence. The royal courts had tempted suitors away from the courts of the barony and the manor ; the royal mints had threatened to abolish private coinage ; the royal faces had been set like flints against the cherished right of private war. At the beginning of the twelfth century, the France of Louis the Fat had been a mere strip of land in the valley of the Seine and the Orléanais ; at the beginning of the thirteenth, the iron hand of Philip Augustus ruled from Arras to Limoges, and from Burgundy to the rocks of Finisterre. As the twelfth century turned on its pivot, the English barons had been revelling in the licence which Stephen could not check ; when the fourth quarter of the century was reached, they had known something of the "demon" power and serpentine cunning of Henry of Anjou. Above these earthly monarchs, gradually putting forward claims which, to the Europe of two centuries before, would have sounded fantastic, rose the mighty power of the Papacy,

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just now reaching its zenith in the person of Innocent III., "the greatest of all the successors of St. Peter." Innocent III. is a name not unknown in connection with Magna Carta; and it is worth noting that, the moment his own claims are acknowledged by John, his heavy hand is laid in the scale in favour of the King. Small wonder that a class which cherished memories of the days when every baron was king on his own land, should regard with dismay this new condition of things, should seek for an opportunity of revolt.

The reign of John was its golden opportunity. Of doubtful title, more than suspected of parricide, defeated and disgraced in war, entangled in a quarrel with the Pope from which he could only extricate himself by a shameful surrender, the King seemed born to afford his barons the chance for which they pined. As if to insist on his own destruction, John must needs heap personal insults on the natural leaders of a baronial revolt. The tale of his evil deeds is too well known to need repetition. Doubtless he did not spare the common people, if they came in his way; but his choicest insults were reserved for the bishops and abbots, whose churches he defaced and whose wool he seized, and for the nobles, whose wives and daughters he boastfully dishonoured. What wonder that his magnates turned upon him?

All this is clear beyond measure in the chronicles. But of any popular rising against the King, not one word. Gervase of Canterbury, Walter of Coventry, Bartholomew Cotton, Roger of Wendover, Henry of Knighton, Ralph of Coggeshall, Matthew of Westminster, annalists of Burton, Margan, Tewkesbury, Winton, Waverley, Dunstable, Osney, Worcester—surely one of these would have had something to say of a popular rising? No. Everything is done by the "magnates," the "nobles," the "earls and barons," the *proceres*, the "knights"; it is almost impossible to reproduce the wearisome re-iteration of these terms by all the chroniclers. Not that these writers have any lack of words to describe the "people," when such is their desire. They can and do talk much of "burgesses," "husbandmen," "men of all sorts and conditions," "inhabitants." Sometimes these persons are being plundered,

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sometimes apologising to a legate for a hasty ebullition of lynching, sometimes hearing a charter read out by the sheriff. But of joining the baronial agitation, not one word. Much capital has been made out of the undoubted fact that London was long in the hands of the barons, and that its mayor was one of the executors of the Charter. But the actual accounts (especially that of Roger of Wendover), make it clear that the barons got possession of the city by a trick, through the connivance of a few of the wealthier citizens. The poorer sort were, in fact, for the King; and had to be roughly used to prevent them attacking the barons. One genuine "popular" rising the chroniclers do indeed show us, that of William, or Wilkin, in Sussex. And this was directed *against* the French allies of the barons. In fact, Matthew of Westminster seems to put the whole thing in a nutshell, when he describes the people of the eastern counties as being :

"miserably crushed as it were between two millstones rolling in reverse ways, to wit, the barons and the royalists."

Surely an odd way for national heroes to behave.

This curious omission on the part of the chroniclers did not fail to strike so thorough a student as Dr. Stubbs.

"That the historians have recorded less of the action of the third estate, is accounted for by the fact, that at this period, and from this period to the Reformation, the baronage acts as advocate for it." . . . . "We do not indeed find, in the list of those who forced the King to yield, any names that prove the commons to have been influential in drawing up the articles."

These are damaging admissions ; and they do not stand alone in Dr. Stubbs' works. Whether the baronage really did "act as advocate" for the commons, may well be doubted. We must consider that question at the next stage. But, in any case, advocacy is not co-operation ; and it is co-operation which Dr. Stubbs, in the passages quoted at the head of this article, has emphatically asserted, and which his followers, less cautious than he, have alleged in still wider terms. In fact, at one point, the Bishop of Oxford seems to have almost abandoned his main contention ; for

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he admits that, in the stormy opening of the drama, during the years 1208-13, we notice

“the absence of anything like popular rebellion, and the postponement of the general rising to the end of the religious struggle.”

And he elsewhere hints, that this submission was purchased, in the earlier stages of the struggle, by a suspension of general taxation. Without entirely admitting the soundness of the reason, we may well admit the truth of the fact. But, once more we ask, where is the evidence for the “general rising at the end of the religious struggle”? Why had the barons to fight for almost every town which they held? Why, when John had been beaten and disgraced, did Tonbridge, Belvoir, Rockingham, Berkhamstead, York, and Hertford fall again into his hands? Why were forty of the leading barons themselves at the point of surrender when John died? Of course everyone knows the cock-and-bull story of the alleged treachery of the French. But that brings us to a still more formidable objection. *Why was it necessary for the barons to call in the French at all?* Surely it was an odd step for a party which at first put the banishment of foreigners in the forefront of its programme? The answer to all these questions is simple and obvious. The baronial party had no popular feeling behind it. In fact, ~~there is some~~ evidence to show that such faint popular manifestation as appeared, was on the side of the king.

⑥ But let us pass from effort to achievement. *Is* the Charter a great landmark in history? Did it win liberties for the masses, for the “people of the towns and villages”? Is “the whole of the Constitutional History of England a commentary on this Charter”? Let us look at the Charter itself, and the demands of the barons, on which it was founded.

It is the fashion to put in the forefront of all accounts of these documents, their so-called “national” clauses, and to treat their “feudal” clauses (which can scarcely be ignored) as an unimportant tail-piece. That is hardly the way of the Charter itself; nor is it the plan which would naturally be followed by an impartial analyst. The Charter is usually divided into sixty-three clauses or articles. Of

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these, thirteen,<sup>1</sup> though important enough at the moment, are purely formal or temporary, and cannot possibly be "landmarks." They come at the end of the document, and their exclusion reduces the number of permanent clauses to fifty. (Of these fifty clauses, *twenty-two*<sup>2</sup> are purely feudal, and they include twelve of the first sixteen articles of the Charter.) Three<sup>3</sup> of the most famous of the remaining clauses concern "free men" only, about whom there will be a word to say. One clause (41) relates to merchants, one (13) to cities, two (1 and 22) guarantee clerical immunities. This leaves twenty-one<sup>4</sup> which may conceivably be of general application. We may summarize thus :—

Formal and temporary clauses . . . . .	13
Purely feudal . . . . .	22
Free men . . . . .	3
Merchants and cities . . . . .	2
The Church . . . . .	2
General . . . . .	21

Total clauses in the Charter . . . . . 63

But we are really making an extravagant allowance, if we admit that all, or even the bulk, of the twenty-one "general" clauses were of real importance to the common man of the thirteenth (or any other) century. To the peasant of John's reign, it would make little difference that the "inquest of life and limb" could be freely had without payment, that he might freely go forth of and return to the realm (he who rarely went beyond his own village during his whole life), that Common Pleas should not follow the King, that justices, sheriffs, and bailiffs should be learned in the law, that the writ of *Præcipe* should no longer be granted to the detriment of feudal claims, that the measure of London should be the standard of ale and barley. What did he care about these things? What the peasant of the

<sup>1</sup> Nos. 49, 50, 51, 52, 53, 55, 56, 57, 58, 59, 61, 62, 63. (I quote from the well-known edition in Stubbs' *Select Charters*.)

<sup>2</sup> 2, 3, 4, 5, 6, 7, 8, 9, 12, 14, 15, 16, 21, 26, 29, 31, 32, 34, 37, 43, 46, 47.

<sup>3</sup> 27, 30, 39.

<sup>4</sup> 10, 11, 17, 18, 19, 20, 23, 24, 25, 28, 33, 35, 36, 38, 40, 42, 44, 45, 48, 54, 60.

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thirteenth century desired, was, that he should not be tallaged at his lord's caprice, that his services should be fixed, that he should have a remedy for unjust eviction, that he might take his labour to another lord if he wished, that he might send his son to school, and marry his daughter without payment of a fine. There is no word in the Charter or the Articles to secure him these rights. The Londoners obtained the insertion in the Articles of a clause about borough tallage; but it did not appear in the Charter, its place being taken by a meaningless confirmation of "existing liberties and free customs."

But it is when we look at the Charter from the point of view of class distinction that we see how hollow is the claim of constitutional progress. The result of analysis is crushing. Six social classes are expressly mentioned by the Charter as recipients of rights, viz., earls and barons (among whom we may include the great ecclesiastics), knights, "free men" (*liberi homines*), clerics, merchants, villeins. Putting aside the "general" clauses, which may be assumed to benefit all alike, we may count up the number of rights accorded to each of these classes. Stated, for the sake of clearness, in tabular form, the figures are somewhat startling. We find that :—

To the earls and barons are guaranteed . . . . .	12 rights <sup>1</sup>
To the knights . . . . .	11 " <sup>2</sup>
To the "free men" . . . . .	4 " <sup>3</sup>
To the lower clergy is guaranteed . . . . .	1 right <sup>4</sup>
To the merchants and burgesses are guaranteed . . . . .	3 rights <sup>5</sup>
To the villeins is guaranteed . . . . .	1 right <sup>6</sup>

<sup>1</sup> (1) Fixed "reliefs," (2) protection against abuses of guardianship, (3) fit marriages for infant heirs, (4) protection to widows, (5) protection of land from debts, (6) fixed aids and sentages, (7) fixed services, (8) assessment of fines by "peers," (9) freedom of taxation, (10) forfeitures of felon tenants' lands, (11) wardship of tenants' heirs, (12) custody of vacant abbeys which they have founded.

<sup>2</sup> All the above except (9) and (12), and, in addition, liberty to do castle guard in person, instead of paying money equivalent.

<sup>3</sup> (1) Moderate fines assessed by the "neighbourhood," (2) no seizure of goods on intestacy, (3) freedom from compulsory cartage, (4) trial by "peers."

<sup>4</sup> Freedom of benefices from fines,

<sup>5</sup> (1) Ancient liberties and customs, (2) moderate fines assessed by "neighbourhood," (3) freedom of trade.

<sup>6</sup> Moderate fines assessed by "neighbourhood."



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This proportion is painfully suggestive of Falstaff's celebrated ratio between sack and bread.

We cannot, of course, get exact figures ; but, according to Sir Henry Ellis' well-known estimate of the Domesday returns, the number of villeins<sup>1</sup> was, in 1086, quite four-fifths of the whole population ; and there is small reason to suppose that it was much less in 1215. In fact, few historians will care to dispute that, at the beginning of the thirteenth century, the vast majority of the dwellers in England were peasants, or that (to quote the high authority of Professor Vinogradoff) "the majority of the peasants are villeins." If to these we add the lower clergy, the merchants and the burgesses, we include all classes that can, by any fair use of the term, be called "popular" ; and it would be a moderate estimate to reckon the total of these at five-sixths of the entire male population. If we were to reckon in the women and children dependent on them, we should, of course, get a higher proportion still. But what becomes of the "national" character of a document which guarantees *five* special rights to five-sixths of the so-called "nation," and *twenty-seven* to the remaining insignificant minority ?

But here we touch what the writer firmly believes to be the great secret of the false glamour which invests Magna Carta. Three well-known clauses confer important rights upon the "free man" (*liber homo*) ; and a very natural confusion of ideas has created the belief, that this highly favoured person corresponds to the "simple freeman" of Teutonic legend, the "man in the street" of the modern Press. German scholars have even invented a special name for him—the *gemeinfrei*, or common freeman. Unhappily for this pleasing theory, the wording of the Charter itself renders it quite untenable. From that excellent source we learn certainly what the *liber homo* was not, and can shrewdly guess what he was. He was neither earl, baron, nor knight ; but he certainly was not cleric, merchant, or villein, for the Charter draws, in three

<sup>1</sup> Including the still humbler ranks of *cotarii*, *berdarii*, &c., who certainly could claim nothing that the villeins could not claim.

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successive clauses,<sup>1</sup> an elaborate distinction between him and them.

As to what he was, it is not quite so clear. But he shared the aristocratic privilege of trial by "peers" (clause 39), he had a "contenement" (clause 20), and held a court (clause 34). Now, unfortunately, we cannot be quite sure what a *contenementum* was, though no less a person than Selden, in after years, thought it meant the estate of a knight or baron. But we may be fairly sure, that the man who held a court, in the England of the thirteenth century, was more free than common. Strange things have been said of the English peasant of the later Middle Ages, but never yet that he rebelled against the King for interfering with his judicial dignity. In truth, the famous 39th clause, which protects the *liber homo* against seizure, imprisonment, disseisin, outlawry, exile, destruction, and attack by the King, was no magnificent declaration of the rights of the common man; it was simply a recognition of the privileges of an aristocratic class, a class of landowners, who, though not technically "feudal," can no more be ranked amongst "the people," than can the country gentleman of to-day.

(c) But the third, and, perhaps, the heaviest charge against the Charter is, that it was a positive stumbling block in the path of progress. Throughout, it aims at consecrating that feudal organisation of society which, happily for the nation, was so soon to pass away. It has elsewhere been pointed out, by an accurate and cool-headed writer, that the rhetorical promises upon which its fame so largely rests were, for all practical purposes, valueless. It would be difficult to show how it secured the "freedom of the Anglican Church." To most observers it would seem, that that Church does not, even now, enjoy any very great measure of freedom—in the sense, at least, in which the word was understood in 1215. "To none will we sell, to none deny or delay, right or justice." It does not require much knowledge of the history of English Law to realise the hollowness of that promise. "It shall be lawful to every one to go forth of the realm" (except in time of war). But what about the writ *ne exeat regno*, and the licence long

<sup>1</sup> 20, 21, 22.

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required for travel? The famous "constitutional" clauses, which are often referred to as guaranteeing the right of Parliamentary taxation, will not bear the test of reading; for it is clear now (1) that they refer only to feudal burdens, (2) that they contemplate a purely feudal assembly, and (3) that, happily for future progress, they disappeared from the Charter immediately after the death of John.

But it is not so generally realised, that some of the clauses of the Charter (and these not the least famous) are positively re-actionary, and would, had they been observed, have hampered seriously the progress of the next generation. By abolishing the writ of *Præcipe* (clause 34), the barons hoped to secure that darling treasure of feudal independence, the monopoly of the manorial courts in suits concerning land. Happily, the clause was evaded, but only at the cost of cumbrous and costly fictions, which disgraced English legal procedure for six centuries. The claim to "trial by peers" was long supposed, by a curious freak of ignorance, to guarantee that "palladium of British liberties," trial by jury. As a matter of fact, it delayed indefinitely the adoption of that wholesome reform; and it is responsible, among other things, for the absurdities of the recent Russell case. The consecration of the lord's claim to the forfeiture of a felon's lands, for centuries worked a cruel injustice to the children of convicts, already, one would suppose, unfortunate enough; and many another oppressive feudal claim obtained a renewed lease of life from the clauses of the Charter. To suppose, in fact, that the barons who claimed the right, in the court of Philip Augustus, of disposing of the crown of England at their absolute discretion, were anxious to share their power with the people whom they plundered and taxed, is to make too great a demand on human credulity. The baronial leaders of 1215 had the inestimable advantage of fighting against a King who seemed determined, on every possible occasion, to put himself in the wrong; and they were not unwilling to strengthen their case by rhetorical flourishes about popular rights. But that they really intended to take the people into partnership, there is no scrap of evidence to show.

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Finally, it is often triumphantly pointed out, that the Charter was re-issued no less than thirty-eight times, now on the mere volition of the royal advisers, now on the demand of reformers. The fact is admitted ; but the inference appears strange. Why was it necessary to insist on the repeated confirmation of the Charter ? Obviously, because it failed to do its work. At first it was firmly believed that this result was due to the violation of its provisions by the royal advisers. It was natural for an unlettered generation, mere children in the ways of political freedom, to take that view. But we, reading the long and stormy reign of John's son in the light of later experience, can see that they were wrong. The cunning favourites of Henry were very careful to observe the letter of the law, just as were the unworthy Ministers of Charles, four centuries later. At last the truth began to dawn upon that really national party, which the evils of Henry's reign slowly brought into existence. The demand for the Charter is still raised ; but chiefly as an ancient and stirring battle cry. It is perceived that the Charter is not enough. It consecrates the past, not the future. It leaves the King in full possession of his feudal claim to exact tallage, it leaves him free to invent new taxes, it makes no provision for national representation, it allows the Ministers of State to be selected purely by royal caprice. The entire break with the past attempted by the Reformers at the Parliament of Oxford in 1258, shows that at last this truth was realised ; and, from that time, the demand for the Charter becomes a matter of form. The scheme of 1258 was too revolutionary ; it succeeded only for a moment. But, in the long reign of Edward Longshanks, the compromise between King and people was slowly worked out, until, at its end, our scheme of government assumed the shape which it preserved, save for brief intervals, till the Revolution of 1688. But it was not the Charter which brought about this result. All the happy changes which we associate with the name of Edward—the creation of a national Parliament, the renunciation of the irregular taxes, free trade in land, the perpetual Peace of the King, the right of the subject to remedy against the royal officials, the Concordat between Church and State, the

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organisation of the Coast Guard, the reform of the Exchequer—all these were the work of men who were unborn, or in their cradles, when the Charter was signed at Runnymede.) And the very vice, not of the Charter itself, but of the literary adulation which in later years grew up around it, is, that it turns the eyes of the Englishman away from a period full of real interest and abundant suggestion, to fix them upon a melodramatic and somewhat tawdry scene in a turgid and unwholesome drama. John, and William Marshall, and even Stephen Langton, are not to be mentioned in the same breath with Edward, and Robert Burnell, and Winchelsey. The scene before Westminster Hall, on the 14th July, 1297, when the great King, thwarted in his skilful plans by the selfish quibbles of his barons, cast himself passionately upon the support of his people, and received from them equally passionate expressions of their trust and love, is a far nobler subject for a national poet or painter, than the hollow truce at Runnymede, when a conspiracy of self-seeking and reckless barons wrung from a worthless monarch the concession of feudal privileges, which he never for one moment intended to observe.

In truth it does not require much historical knowledge to discover the real author of the Myth of Magna Carta. He was a man whose lot was cast in troublous times, amid the angry mutterings of that coming struggle which was to light the torch of civil war in England. Deeply pledged to the popular side in that struggle, he cast into it all the weight of his profound if somewhat undigested learning, and his powerful if somewhat unscrupulous intellect. It was an age in which historical discoveries were received with credulity, in which the canons of historical criticism were yet unformulated. (Doubtless, more than one of Coke's contemporaries (John Selden, for example) must have had a fairly shrewd idea that Coke was mingling his politics with his historical research. But, for the most part, those competent to criticise Coke's research were of his way of thinking in politics, and did not feel called upon to quarrel with their own supporter.) (Zeal for historical truth is apt to pale before the fiercer flame of zeal for

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political victory.) It is a tribute to Coke's character and ability, that he imposed his ingenious but unsound historical doctrines, not only on an uncritical age, but on succeeding ages which deem themselves critical. It is not, perhaps, altogether a testimony to the industry and acumen of a generation which might well be impartial in such matters, that the legend invented by Coke has been so long allowed to pass current as the gospel of history.

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